from each other and when the proper construction is so varied by the peculiar circumstances of each case it seldom happens that the words of one will are a sure guide for the construction of words resembling them of another."

In the present case, the will stated that the trustees were to *permit* the said defendants to *occupy* the premises. It was also apparent from clause 9 that it was the intention of the testator that the trustees were to hold the property in trust only for two years at the end of which they were to divide and distribute the same.

I would, having regard to the words used, namely, "permit to occupy" and that they were to occupy for only two years, come to the view that all that is given to the defendants is a mere licence to live in the house.

In the circumstances, there shall be an order directing the defendants to pay to the receiver all rents collected and that any future rents be paid to him in terms of the summons.

Costs of this application, as between solicitor and client, to be paid out of the estate.

Order accordingly.

Solicitors: *Das & Co.; Gibb & Co.*

LEE BENG CHOON v. TAN NGIAP KEE

[O. C. J. (Ong J.) June 8, 1962]

[K.L. — Civil Suit No. 13 of 1961]

Estoppel — Sale of car to plaintiff — Fraudulent representation by purported agent of defendant — Car owned by hire-purchase company — Whether plaintiff was dealing with fraudulent agent on the footing of a principal — Whether plaintiff entitled to relief — Whether estopped from denying title of plaintiff.

Sale of goods — Motor car — Registration book and signed transfer form — Whether document of title.

The plaintiff was induced by the fraud of one C (who represented himself as the duly authorised agent of the defendant) to purchase a car in the belief that the car belonged to the defendant, when in fact the owners of the car were a hire-purchase finance company. The plaintiff now claimed the sum of $4,850 and general damages for loss sustained as a result of fraudulent misrepresentation made by C; in the alternative for breach of contract in that the sale implied a warranty of the defendant's title to the vehicle in question. It was contended for the plaintiff: (i) the defendant had held out C as his duly authorised agent because he had allowed C to have possession of the car, its registration card and a blank transfer form with the defendant's signature thereon and (ii) the defendant should be precluded from denying that the purported sale was within the apparent scope of C's authority.

Held: (1) the mere fact of the defendant leaving the car, its registration book and or signed notice of change of possession of a motor vehicle in C's possession did not amount to a representation that defendant was the owner;

(2) no representation by an agent as to the extent of his authority can amount to an holding out by the principal;

(3) as the plaintiff paid C without attempting to satisfy himself whether C had authority to receive payments and the plaintiff by setting off a debt owing by C to him from the purchase price, he must be held bound by his own act in dealing with C otherwise than as the defendant's agent.

Cases referred to:—

(1) *Joblin* v. *Watkins & Roseveare (Motors) Ltd.* [1949] 1 All E.R. 47.

(2) *Central Newbury Car Auctions Ltd.* v. *Unity Finance Ltd.* [1956] 3 All E.R. 905, 920.

(3) *Attorney-General for Ceylon* v. *A.D. Silva* [1953] A.C. 461, 479.

(4) *Butwick* v. *Grant* [1924] 2 K.B. 483.

(5) *Russell* v. *Bangley* 106 E.R. 982, 983.

(6) *Tan Ah Boon* v. *State of Johore* [1936] M.L.J. 187.

(7) *Du Jardin* v. *Beadman Bros. Ltd.* [1952] 2 All E.R. 160.

CIVIL SUIT.

M. S. Chooi for the plaintiff.

Y. S. Lee for the defendant.

Cur. Adv. Vult.

Ong J.: The plaintiff, misplacing his trust in a motor-car salesman, was induced by the fraud of the other to purchase a car in the belief that it was the defendant's property and that the salesman was the defendant's agent for sale. The legal owners were in fact a hire-purchase finance company. The question is whether the plaintiff is entitled to any relief against the defendant.

In the plaintiff's statement of claim it was alleged that on October 29, 1959 the defendant through his agent, one Chua Kim Leng, sold a motor-car No. BE. 8088 to the plaintiff for the sum of $4,850; that on November 19, 1959 the plaintiff resold this car to a Malay purchaser for the same price; and that on November 26, 1960 a finance company, Lombard Acceptance (Malaya) Ltd., as owners of the car, seized it for non-payment of hire due under a hire-purchase agreement made on September 19, 1959 between the company and the defendant. As a result the plaintiff had to indemnify the Malay purchaser to the extent of $4,850 for his loss. The plaintiff now claims from the defendant the sum of $4,850 and general damages for loss sustained as a result of fraudulent misrepresentation made to the plaintiff by Chua acting as agent of the defendant; in the alternative, for breach of contract in that the sale implied a warranty of the defendant's title to the vehicle in question.

In his defence the defendant stated that on September 19, 1959 Chua had requested him to allow or lend his name to be used for that of Chua in a hire-purchase agreement with the finance company for the purchase of a new Morris Minor which Chua felt embarrassed in buying in his own name by reason of his being the sales supervisor of the East Asiatic Company who were the sole agents and distributors for Fiat cars. As Chua promised to be responsible for all payments under the agreement the defendant accepted the explanation and signed the agreement as requested. Subsequently Chua told the defendant that he had settled with the finance

company and thereby obtained from the defendant his signature on a blank form for transfer of the vehicle. The defendant in fact had never paid out any money in respect of the transaction, nor had he ever seen or had possession or use of the vehicle.

It is clear that, in the circumstances, the defendant never gave Chua any express authority to sell since the car was never his to dispose of. It is also clear that there were no direct dealings between the plaintiff and the defendant. Therefore the only nexus that could have come about between them so as to give rise to any claim, in tort or in contract, was that in the transaction Chua was acting as the defendant's ostensible agent and the plaintiff dealt with him on such footing. The onus of establishing that the defendant held out Chua as his agent so as to be estopped from denying his authority accordingly rests on the plaintiff.

Before discussing any questions of law, it will be necessary to consider, first of all, what are the true facts to which the law must be applied. The evidence called on behalf of each party differs somewhat from their case as set out in the respective pleadings, but the material facts are not in dispute. The plaintiff is the sole proprietor of Eastern Motor Co. and carries on business at No. 3375 Jalan Gajah Mati in Kota Bharu, Kelantan. He is agent for Fiat cars only, and since 1956 had come to know Chua very well as sales supervisor representing George Lee Motors Ltd., and subsequently the East Asiatic Co. Ltd., Malayan distributors for Fiat. The relations between Chua and the plaintiff were close and cordial because, on account of Chua's position, the plaintiff was naturally anxious to maintain good relations with him, although the desire to preserve goodwill was, as the plaintiff put it, in fact mutual. At any rate, during a period of two or three months preceding October 1959, Chua had taken advantage of his position to draw cash advances from the plaintiff personally, as well as from his firm, to the total of about $2,000, which the plaintiff "was hoping" he would repay.

Coming to the relevant transaction itself, the plaintiff stated in his evidence that on October 20, 1959 his "friend" Chua had telephoned him at Kota Bharu from Kuala Lumpur to say that he (Chua) had a friend who wanted to sell an almost new Morris Minor car for $4,850. The plaintiff accepted the offer and Chua promised to bring the necessary documents to Kota Bharu in due course. On October 22 Chua caused the car to be driven to Kota Bharu for delivery to the plaintiff who was given at the same time the registration book (Ex. P1). That registration book was in fact a duplicate issued under rule 12(1) of the Motor Vehicles (Registration and Licensing) Rules, 1959, and stamped as such. In their telephone conversation of October 20, it had been arranged that the plaintiff was to sell the car before settling payment with Chua, and about 3 days after its delivery the plaintiff was successful in finding a prospective purchaser. On October 28 he telephoned, and confirmed by telegram, to the Registrar and Inspector of Motor Vehicles, Selangor his request for the file of BE. 8088 to be sent to the R.I.M.V., Kelantan and Trengganu. On November 16 Chua arrived in Kota Bharu and brought an M.V.3 form, entitled "Notice of Change of Possession of a Motor Vehicle", which was signed in blank by the defendant. He failed, however, to produce the certificate of insurance relating to the vehicle, and when asked by the plaintiff for this certificate and the policy, replied that he had left them at home but would send them later. On the same day, November 16, Chua demanded payment for the car. He was then owing the plaintiff about $2,000. The plaintiff set off this sum against the price and paid the balance of $2,800 (approximately) in cash to Chua at his request because he said it was inconvenient to receive payment by cheque. The "sale" thus took place on November 16, and not October 29 as pleaded in the statement of claim. A receipt should have been given by Chua for the money paid to him, but none was made or produced, and the plaintiff said that he used in preference his own printed form which was filled in by Chua. The document (Ex. P3) reads as follows:

Stamped 6 cts. 16-11-'59	Kota Bharu, Kelantan, 16th November, 1959.

Messrs. The Eastern Motor Co.,
3375, Jalan Gajah Mati,
Kota Bharu.

Dear Sir,

I hereby warrant that I am absolute owner without encumbrances of any kind of my Motor Vehicles:— Description: Morris Minor BE 8088 ..... Registration No. BE. 8088, Engine No. 328810 ..... Chassis No. 739904. And I hereby transfer all my rights, title and interest in the Said Vehicle to you for the sum of Dollars Four thousand eight-hundred fifty only ($4,850.00) which amount is to be treated as full payment for the said Vehicle.

I will make good to you any damage that you may sustain through any defect or dispute in my title and I further undertake to refund all monies and any subsequent expenses incurred thereon in case of any cancellation of licence by the Registrar and Inspector of Motor Vehicle of the said Vehicle.

Yours faithfully,
(Sd.) K. L. Chua
Signature I/C. No.
OM 024535
for and on behalf of Tan Ngiap Kee,
Kuala Lumpur.

(Sd.) Illegible.
Witness I/C. No.

On November 19 the plaintiff formally concluded the sale of the car to the Malay purchaser, Haji Osman, for $4,850, taking the Haji's old car in part payment. On November 22, however, the plaintiff informed the R.I.M.V. of a change of address of Tan Ngiap Kee, the defendant, as registered owner of the vehicle and sent in the registration book for such change to be recorded. Strangely enough, the defendant

remained the registered owner, but his new address was that of the plaintiff himself. This change of address was, of course, fictitious and the defendant knew nothing about it. The plaintiff had in fact sold the car to Haji Osman three days earlier. It would thus appear that in the plaintiff's regard the defendant was a person of no consequence whatsoever. On November 29, a second change was entered on the registration book recording the transfer to Haji Osman. For this purpose the blank form S.M.V.3 bearing the defendant's signature was filled in by the plaintiff and sent to the R.I.M.V.

From the foregoing facts it was contended that the defendant, by his own negligent conduct, had enabled Chua to hold himself out as the other's agent and thereby to defraud the plaintiff. It was submitted by counsel for the plaintiff that the principles to be applied are as set out in *Halsbury* (3rd Ed.), Vol. 1, p. 208, on authority by estoppel, namely:

> "Where a person has by words or conduct held out another person, or enabled another person to hold himself out, as having authority to act on his behalf, he is bound, as regards third parties, by the acts of such other person to the same extent as he would have been bound if such other person had in fact had the authority which he was held out as having."

It was argued that the holding out in this case consisted in the defendant's allowing Chua to have possession of the car and its registration book and supplying him, in addition, the blank transfer form with the defendant's signature thereon, so that Chua was vested with the necessary indicia of title, and thereby with ostensible authority to dispose of the vehicle. Hence the defendant should be precluded from denying that the purported sale by Chua was within the apparent scope of his authority.

With all respect to counsel, I am unable to agree. It has been held in *Joblin* v. *Watkins & Roseveare (Motors) Ltd.* [1], and affirmed in *Central Newbury Car Auctions Ltd.* v. *Unity Finance Ltd.* [2] that the registration book of a car is not a document of title. In the latter case Morris L.J. said:

> "..... it cannot be assumed that the person in possession of a car and its registration book is the owner of the car. The absence of a registration book when a car is being sold will naturally give rise to much inquiry. The existence of one in the hands of a seller does not remove all reason for inquiry and does not prove legal ownership."

In Malaya, as in England, the registration book specially emphasises that "the registered owner is the person who keeps the vehicle. He may or may not be the legal owner." Thus the *Central Newbury case* is authority for the proposition that mere possession of a car together with its registration book raises no presumption of legal ownership. When A delivers possession of a car and its registration book to B there is equally no presumption that either of them is the legal owner. Therefore by leaving both the car and its registration book in Chua's possession the defendant cannot be said to have made any representation that he was the owner. Supplying Chua also with the signed M.V.3 form in blank does not in my opinion carry the matter any farther. The form plainly purports to be nothing more than what is stated therein, namely, that it is a notice of change of possession only. Change of possession of course can take place for a variety of reasons, one of which may be sale by the legal owner. The form does in fact provide, in paragraph 3, for the reason for change of possession to be stated. In the instant case, however, that paragraph was left blank over the defendant's signature. The omission to fill in the reason must be assumed to have been intentional. It would therefore be an unwarranted assumption to read more into the notice than what it actually contains. I accordingly hold that, by giving Chua possession of the car, its registration book and the signed M.V.3 form, the defendant in effect made no representation whatsoever that he was its owner. The truth is that the plaintiff relied entirely on Chua's representations as to his authority. It follows, therefore that in holding himself out as the defendant's agent for sale, Chua exceeded the scope of his authority and arrogated to himself powers of disposal which the defendant never pretended to have. In my view, this case falls within the principles enunciated by the Privy Council in *Attorney-General for Ceylon* v. *A.D. Silva* [3], namely:—

> "All 'ostensible' authority involves a representation by the principal as to the extent of the agent's authority. *No representation by an agent as to the extent of his authority can amount to a 'holding out' by the principal.*" (The italics are mine).

On this ground the plaintiff's cause of action in tort must fail.

As to the alternative claim in contract the action likewise fails because, on the facts, the conclusion is inescapable that the plaintiff was dealing with Chua unequivocally on the footing of a principal. The contract he made with Chua was entirely inconsistent with one made with an agent for the simple reason that in making payment of the purchase price, the plaintiff had deducted therefrom by way of set-off the sum of $2,000 owing by Chua personally, which he would not have been entitled to do if Chua was acting as the defendant's agent. The law is that authority to an agent to sell goods does not of necessity imply authority to receive payment of the price: see *Butwick* v. *Grant* [4]. Not only, however, did the plaintiff pay Chua without attempting to satisfy himself whether Chua had authority to receive payment, but he also went a step further by setting off for his own benefit an agent's personal debt against moneys due to the principal, without the latter's knowledge or consent. On this point I would refer to the observations made by Abbott C.J. in *Russell* v. *Bangley* [5] in these words:

> "The general rule of law is that if a creditor employs an agent to receive money of a debtor, and the agent receives it, the debtor is discharged as against the principal, but if the agent, instead of receiving money, writes off money due from him to the debtor, then the latter is not discharged."

In *Bowstead* on *Agency* (12th Ed.), p. 219, the principle is stated as follows:

> "Notwithstanding any special custom or usage it is not deemed to be within the apparent scope of the authority of any agent to receive payment on his principal's behalf by way of set-off or settlement of accounts between himself and the person making the payment."

The plaintiff cannot have it both ways. Having elected to make the set-off, he must be held bound by his own act in dealing with Chua otherwise than as the defendant's agent.

Another ground for dismissal of this action is merely a corollary of the above. Assuming that there was an agreement made between the plaintiff and the defendant, it is nevertheless clear that the plaintiff can maintain no action for breach of contract unless he can aver and prove that he has performed, or has at all times been ready to perform, his part of the contract: see *Tan Ah Boon* v. *State of Johore* [6]. This of course the plaintiff is unable to do, having been in breach of the contract himself by failing to pay the purchase price to the defendant.

Before concluding I should add a few words with regard to section 27 of the Sale of Goods (Malay States) Ordinance, 1957, since counsel for the plaintiff cited *Du Jardin* v. *Beadman Brothers, Ltd.* [7], in support of his argument. In my view neither that case nor section 27 has any application here. The defendant was never the owner of the car, whereas section 27 affects the owner of goods who is by his conduct precluded from denying the seller's authority to sell. The proviso to the section is likewise irrelevant because a registration book is not a "document of title" to goods, and the sale of the second-hand Morris was not a sale made by Chua "when acting in the ordinary course of business of a mercantile agent." Chua's ordinary course of business was the sale of Fiat cars exclusively.

For the above reasons I do not think it necessary to discuss the plaintiff's own negligent conduct in any detail. It is sufficient to say that the evidence of the plaintiff himself abundantly shows that he had failed and neglected to take the most elementary precautions in self-protection. He was put on inquiry when he was handed a duplicate registration book instead of the original, and again when he was not given the certificate of insurance and policy which he had every right to expect. It is generally known — and the plaintiff does in fact know — that whenever a car is subject to a hire-purchase agreement, an endorsement to that effect is made on the policy. He was well aware, as an experienced motor-car dealer, that the greater majority of cars in this country are bought under hire-purchase terms. Any prudent man of business should, and could easily, have ascertained the legal ownership of a vehicle by addressing his inquiry to the person named in the registration book, or to the R.I.M.V., or to the insurers. I see no reason why the rule of *caveat emptor* should not apply here. For breach of warranty of authority it is Chua, and not the defendant, who should be liable.

The claim is dismissed with costs.

Claim dismissed.

Solicitors: *Y. S. Lee & Co.; Balwant Singh & Co.*